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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEE JACKSON and KENNETH
JACKSON,

Plaintiffs,

v.

SILICON VALLEY ANIMAL
CONTROL AUTHORITY; CITY
OF SANTA CLARA; CITY OF
CAMPBELL; HUMANE SOCIETY
SILICON VALLEY and DOES
1 TO 20,

Defendants.

Case No: C07 05667 RS

DEFENDANT HUMANE SOCIETY
SILICON VALLEY'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT, OR,
ALTERNATIVELY FOR PARTIAL
SUMMARY JUDGMENT
DEFENDANT HUMANE SOCIETY
SILICON VALLEY

Date: September 3, 2008

Time: 9:30

Place: Courtroom 4

Judge: Richard Seeborg

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12 **UNITED STATES DISTRICT COURT**
13
14 **NORTHERN DISTRICT OF CALIFORNIA**
15
16 **SAN JOSE DIVISION**

17 LEE JACKSON and KENNETH
18 JACKSON,

19 Plaintiffs,

20 v.

21 SILICON VALLEY ANIMAL
22 CONTROL AUTHORITY; CITY
23 OF SANTA CLARA; CITY OF
24 CAMPBELL; HUMANE SOCIETY
25 SILICON VALLEY and DOES
26 1 TO 20,

27 Defendants.

Case No: C07 05667 RS

DEFENDANT HUMANE
SOCIETY SILICON VALLEY'S
NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT, OR,
ALTERNATIVELY FOR PARTIAL
SUMMARY JUDGMENT

Date: September 3, 2008

Time: 9:30 a.m.

Courtroom: 4

Judge: Richard Seeborg

28 PLEASE TAKE NOTICE that on September 3, 2008, at 9:30 am, or as soon
thereafter as the matter be heard in Courtroom 4 of the above entitled court, located at 280
South First Street, San Jose, California, defendant HUMANE SOCIETY SILICON
VALLEY (the "HUMANE SOCIETY"), will and hereby does move this Court for an
order granting summary judgment in favor of defendant, and against plaintiffs LEE and
KENNETH JACKSON. In the alternative, the HUMANE SOCIETY, moves for an order
granting partial summary judgment as to each of the following issues:

14 This motion for summary judgment, and the alternative motion for partial summary
15 judgment, is based on this notice, California Penal Code Section 597.1, the accompanying
16 memorandum of points and authorities, declaration of Karren L. Freedman (with testimony
17 and exhibits from the depositions of plaintiffs LEE JACKSON and KENNETH JACKSON
18 attached), declaration of Beth Ward, and the following declarations that co-defendant
19 SILICON VALLEY ANIMAL CONTROL AUTHORITY has filed with its Motion for
20 Summary Judgment, or in the Alternative Partial Summary Judgment: Al Davis, Antje
21 Morris, and Russ Patterson (copies enclosed for the Court's convenience). This motion,
22 and the alternative motion for partial summary judgment, is also based on the court's
23 records and files in this case, and upon such other evidence or argument as may be
24 presented at the hearing.

I. INTRODUCTION

2

DEFT HUMANE SOCIETY'S MOTION FOR SUMMARY JUDGMENT C07 05667 RS

1 from their motorhome. The issue is straightforward: Did the HUMANE SOCIETY
 2 wrongfully exercise dominion over the seized animals? Since the seizure was lawful, and
 3 plaintiffs failed to pay required board and care charges, the answer must be no, and
 4 therefore the HUMANE SOCIETY is entitled to judgment in its favor.

5 II. FACTS

6 Plaintiffs LEE and KENNETH JACKSON have been married for 43 years. Since
 7 the year 2000 they have lived in a motorhome.¹ The refrigerator in the motorhome does
 8 not work and the JACKSONS do not use the shower; Mr. JACKSON sleeps on the floor in
 9 the kitchen and his wife sleeps on the couch.²

10 While the JACKSONS do not have any children,³ as of December 19, 2005, they
 11 were keeping 6 dogs and 15 cats inside the motorhome, including two feral cats. LEE
 12 JACKSON considered herself to be the owner of all of those animals.⁴ Mr. JACKSON
 13 considered himself and his wife to be the owners of all the animals, except the two feral
 14 cats.⁵

15 On Dec. 19, 2005, Officer ANTJE MORRIS of SVACA knocked on the door of
 16 the motorhome while it was parked near Boston Market in Mervyn's Plaza in Santa Clara.⁶
 17 Both Mr. and Mrs. JACKSON answered the door, at which point Officer MORRIS told
 18
 19
 20

21 ¹ Leola Jackson deposition 10:24 - 11:5; Kenneth Jackson deposition 8:22 - 9:21. All transcript
 22 excerpts are attached as Exhibits A and B to the accompanying declaration of Karren L. Freedman;
 23 for brevity, further transcript references will be to "Leola Jackson deposition" and "Kenneth
 Jackson deposition."

24 ² Kenneth Jackson deposition 58:21 - 59:13, 63:18 - 64:13.

25 ³ Kenneth Jackson deposition 9:22-23

26 ⁴ Leola Jackson deposition 59:7 - 62:19

27 ⁵ Kenneth Jackson deposition 30:13 - 31:6.

28 ⁶ Leola Jackson deposition 15: 14-16, 21:14 - 22:3; Kenneth Jackson deposition 18:11-20.

1 them she was there to check the JACKSONS' dogs.⁷

2 Mrs. JACKSON showed Officer MORRIS one of her dogs, Calae, who was 15
3 years old and had a broken jaw for "maybe only three or four or five months; just a short
4 time."⁸ Mrs. JACKSON brought out a second dog, Minnilinn, for Officer MORRIS to
5 see. The dog was wearing diapers to control bleeding. Officer MORRIS described the dog
6 as hemorrhaging and having "severe dental problems."⁹

7 Based on the condition of these two dogs, Officer MORRIS went inside the
8 motorhome to check the other animals because she was concerned about their welfare.¹⁰
9 Neither Mr. nor Mrs. JACKSON told Officer MORRIS that she could not enter the
10 motorhome.¹¹ Officer Morris made these observations in her written report:

11 "I was appalled by the clutter and the strong stench of ammonia caused
12 from urine.

13 There were 4 dogs tied to the couch, 1 dog tied to the bathroom cabinet and
14 one dog to the kitchen stove. They were tied up on leashes allowing them
15 only about 1 foot of movement. I only saw one bucket partially filled with
16 water for the dog tied to the kitchen stove. Even though the small dogs
17 were wearing sweaters, I noticed that they were underweight once I handled
18 them. Their coats were matted and nails over grown.

19 The cats were confined in 2 cat condos at the far end of the motor home.
20 There were 6 cats inside each of the condos. In each condo a dominate cat
21 forced the remaining cats to cower and hide at the bottom....The litter

22 ⁷ Kenneth Jackson deposition 22:10 - 23:20; Leola Jackson deposition 30:19 - 32:3 (The accounts
23 differ slightly but not materially); Report of Officer Antje Morris of the Silicon Valley Animal
24 Control Authority, Exhibit B to the declaration of Antje Morris. (This declaration has been filed
25 with the supporting papers for the motion for summary judgment (or in the alternative, for partial
26 summary judgment), filed by co-defendant Silicon Valley Animal Control Authority. For the
27 Court's convenience, a copy of this declaration and exhibits accompanies the within motion.

28 ⁸ Leola Jackson deposition 32:16 - 34:14; Kenneth Jackson deposition 23:16 - 24:6.

⁹ Report of Officer Antje Morris of the Silicon Valley Animal Control Authority, p.1, Exhibit B to
the declaration of Antje Morris (hereinafter "Officer Morris report").

¹⁰ Officer Morris Report, p.1.

¹¹ Kenneth Jackson deposition 38:21 - 40:5; Leola Jackson deposition 36:20 - 38:22; Officer
Morris report, p.1.

1 boxes were not properly maintained as they contained a large amount of
2 fecal matter.

3 The stench of urine was overwhelming which caused me to cough and I
4 tried to hold my breath as long as I could. Numerous flies were present,
5 especially in the cat area. There were several empty food bowls outside the
6 condos. The water bowls inside the condos were either empty or barely
7 filled with water.”¹²

8 Mr. JACKSON perceived that Officer MORRIS was only in the motorhome for “a
9 few moments” and then other animal control officers arrived, along with Santa Clara
10 police (but no other organizations).¹³ Animal control officers from SVACA seized all 21
11 animals from the motorhome and then left, as did the Santa Clara police officers who had
12 responded. Mr. and Mrs. JACKSON were allowed to stay with their motorhome.¹⁴

13 The HUMANE SOCIETY, which does not employ any animal control officers, and
14 is not an enforcement agency, did not participate in the seizure of the animals.¹⁵ After
15 SVACA seized the animals from the JACKSONS’ motorhome, SVACA transported the
16 animals to the HUMANE SOCIETY, which provided needed veterinary care, as well as
17 food and shelter.¹⁶ The HUMANE SOCIETY operates a shelter that has an emergency
18 animal hospital, and its motto is that the HUMANE SOCIETY is “The Best Place to Adopt
19 a Pet.”¹⁷

20 **A. Notices & Post-Seizure Hearing**

21 SVACA gave plaintiffs a Notice: Seizure of Animals. The Notice is dated
22

23 ¹² Officer Morris report, pp.1-2.

24 ¹³ Kenneth Jackson deposition 40:6 – 41:14; Leola Jackson deposition 40:23 – 41:10.

25 ¹⁴ Kenneth Jackson deposition 70:25 - 71:10, 72:8-20.

26 ¹⁵ Declaration of Beth Ward.

27 ¹⁶ Declaration of Beth Ward, and Exhibit A thereto.

28 ¹⁷ Declaration of Beth Ward.

1 December 19, 2005 at 4:15 p.m.¹⁸ While Mr. JACKSON did not remember receiving the
 2 Notice,¹⁹ Mrs. JACKSON did. She first testified at deposition that she did not receive the
 3 Notice until *after* the December 22, 2005 post-seizure hearing, at the same time she
 4 received a Declaration of Ownership or Right to Keep Animal, on which she had written
 5 "Please make the hearing as soon as possible. I love my animals and they love me."²⁰

6 Mrs. JACKSON then read her handwritten comment requesting that a hearing be
 7 held as soon as possible, and changed her testimony, saying: "Well, then, she [Officer
 8 Morris] gave this to me prior to the hearing." Mrs. JACKSON wrote on the bottom of the
 9 Declaration: "Please notify us of date by phone. We don't pick up our mail daily because
 10 of gas prices."²¹

11 The Notice: Seizure of Animals referred to the "enclosed declaration" [Declaration
 12 of Ownership or Right to Keep Animal] and also stated that "costs for care/treatment of
 13 animal(s) properly seized are liens against the animal(s). No animal will be returned until
 14 liens are paid."²²

15 Mr. JACKSON understood the purpose of the Declaration was to request a hearing,
 16 and he signed it along with his wife on either December 19th or December 20th.²³

17 SVACA held a post-seizure hearing on December 22, 2005 that the JACKSONS
 18 attended.²⁴ At the hearing, Mr. JACKSON asked a few questions, and Mrs. JACKSON
 19

20
 21 ¹⁸ Declaration of Antje Morris, and Exhibit B thereto (Officer Morris Report, p.2); Declaration of
 22 Albert Davis (original filed with SVACA's Motion for Summary Judgment, copy accompanies the
 within motion).

23 ¹⁹ Kenneth Jackson deposition 72:21 – 74:6, 76:10 - 77:4, and Exhibit I thereto.

24 ²⁰ Leola Jackson deposition 83:1-23, and Exhibit I.

25 ²¹ Leola Jackson deposition 85:4 – 87:9.

26 ²² Exhibit I to the Kenneth Jackson deposition.

27 ²³ Kenneth Jackson deposition 74:7 – 77:1.

28 ²⁴ Kenneth Jackson deposition 77:5 – 78:15, and Exhibit J thereto (12/21/05 letter from Al Davis of
 SVACA advising that hearing was set for December 22, 2005 at 9 a.m.)

1 spoke. Campbell Police Captain Russell Patterson conducted the hearing, and told the
 2 JACKSONS at its conclusion that the seizure was proper and justified. The JACKSONS
 3 received a letter from him to that effect dated the same day as the hearing.²⁵

4 Captain Patterson also prepared Findings in Support of Decision Affirming Seizure
 5 and Impoundment in which he concluded that the animals were being cruelly treated, the
 6 officer had reasonable grounds to believe that very prompt action was required to protect
 7 the health or safety of the animals or others, that there was a reasonable basis to believe
 8 that the animals were infected with disease that could be transmitted to humans, and that
 9 there was a reasonable basis to believe that seizure and impoundment “was necessary to
 10 protect the public health or safety....”²⁶

11 Following the post-seizure hearing, the JACKSONS did not pay boarding charges
 12 that SVACA told them in writing must be paid.²⁷ On January 6, 2006, more than 14 days
 13 following the seizure, SVACA informed the HUMANE SOCIETY via e-mail that
 14 plaintiffs had failed to pay costs for care and treatment of animals, that the animals were
 15 now considered abandoned, and were released to “HS [HUMANE SOCIETY] and our
 16 care.”²⁸ Most of the animals were sent to rescue groups (because they were not suitable
 17 for general adoption); one dog and five cats were euthanized.²⁹

20 ²⁵ Kenneth Jackson deposition 79:7-11, 79:23 - 80:7, 81:2 - 82:11, and Exhibit K thereto; Leola
 21 Jackson deposition 91:3-9; Declaration of Russell Patterson, and Exhibit B thereto (filed with
 22 SVACA’s Motion for Summary Judgment).

23 ²⁶ Declaration of Russell Patterson, and Exhibit A thereto (filed with SVACA’s Motion for
 24 Summary Judgment, copy accompanies the within motion).

25 ²⁷ Kenneth Jackson deposition, 88:24 - 89:7, 91:3-12; 104:7-12, and Exhibit M thereto.

26 ²⁸ Declaration of Beth Ward, and Exhibit B thereto.

27 ²⁹ Declaration of Beth Ward. As will be explained in the Memorandum of Points and Authorities
 28 that follows, the ultimate disposition of the animals is not a material fact since plaintiffs were
 stripped of their possessory interests when they failed to pay SVACA’s boarding charges. The
 HUMANE SOCIETY has included this information so that the Court has a complete picture of this
 case.

1 The JACKSONS now have "one little dog" and a "little cat," with no plans to
2 acquire more animals.³⁰

3 **B. Procedural History**

4 Plaintiffs filed a complaint in Santa Clara County Superior Court on January 29,
5 2007, and a first amended complaint on September 28, 2007. In the ninth cause of action,
6 plaintiffs allege that the HUMANE SOCIETY "took possession of Plaintiffs' pet animals
7 that had been seized by the Silicon Valley Animal Control Authority and converted them
8 to their own use."

9
10 SVACA filed a Notice of Removal in State court on November 7, 2007. A further
11 case management conference is set in the United States District Court for the Northern
12 District Court of California on August 13, 2008, with a trial date currently set for October
13 27, 2008.

14 **III. LEGAL ARGUMENT**

15 **A. Summary of Argument**

16 The HUMANE SOCIETY is named only in plaintiff's ninth cause of action for
17 conversion, which alleges that the HUMANE SOCIETY took possession of the animals
18 seized by SVACA and converted them.

19 Under California law, conversion is the "wrongful exercise of dominion over the
20 property of another." *Burlesci v. Peterson*, 68 Cal.App.4th 1062, 1065 (1998). Plaintiffs
21 cannot prevail on this claim on two related grounds: first, SVACA's seizure of the animals
22 was proper, precluding any theory that the HUMANE SOCIETY'S taking possession to
23 provide care was "wrongful;" and second, plaintiffs' failure to pay the boarding charges as
24 required by statute stripped them of any possessory interest in the animals.

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26
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28 ³⁰ Kenneth Jackson deposition 95:6 - 96:17.

B. SVACA Was Statutorily Required to Seize Plaintiffs' Animals Pursuant to Penal Code Section 597.1(b), Thereby Precluding Any "Wrongful Exercise" of Dominion Over the Animals

First, there was no wrongful exercise of dominion. On the contrary, plaintiffs maintained these dogs and cats in conditions that were clearly inhumane, as Captain Patterson found in upholding the seizure, and as Officer MORRIS' report makes abundantly clear. Common sense dictates that one does not keep 21 animals confined in a motorhome.

Mrs. JACKSON told Officer MORRIS that Calae, one of the two dogs Mrs. JACKSON showed the officer, had a broken jaw and that the dog was injured when striking its head on a table while the JACKSONS were driving their motorhome a year before the seizure (Officer Morris report). While the JACKSONS' deposition testimony was different from the admission quoted by Officer MORRIS, it is undisputed the Calae's jaw had been broken for months.

The other dog that Mrs. JACKSON showed Officer MORRIS had severe dental problems and was bleeding (regardless of the cause). It is hard to imagine a situation that did not present reasonable grounds for the officer to investigate further.

Officer MORRIS described in her report the stench of ammonia from urine, the lack of water, the litter boxes filled with fecal matter, flies, and the apparent health problems of the cats (ear mites, sneezing, discharge from their eyes and noses).

California has enacted a comprehensive statute that governs enforcement of animal cruelty laws, Penal Code Section 597.1. In *Broden v. Marin Humane Society*, 70 Cal.App.4th 1212 (1999) the California Court of Appeal described Penal Code Section 597.1 as a "self-contained regulatory scheme covering treatment of animals." *Id.*, at 1216. The Court summarized the statute, which had not been previously judicially construed:

"It provides that the failure to provide animals with 'proper care and attention' is a misdemeanor. (Subd. (a).) It covers the authority of animal control officers over sick, injured, straying, or abandoned animals in nonemergency situations. It further provides that animals may be seized or impounded when such an officer 'has reasonable grounds to believe that very prompt action is required to protect the health or safety' of the

1 animals. (Subds. (a) & (b).) It deals with the circumstances in which
 2 animals may be 'killed' or 'humanely destroyed.' (Subds. (b), (c), (e) & (i).
 3 Animals that were 'properly seized' are to receive 'care and treatment,' the
 4 costs of which 'shall constitute a lien on the animal' that the owner must
 5 pay before the animal is returned. (Subds. (a) & (b).) The owner of a seized
 6 or impounded animal is entitled to 'a postseizure hearing to determine the
 7 validity of the seizure or impoundment,' return of the animals, and liability
 8 for costs. (Subds. (f) & (j).)" *Id.*, at 1216-1217.

9 Subdivision (b), referenced above, provides that an animal control officer:

10 "may likewise take charge of any animal, including a dog or cat...that...is
 11 being cruelly treated, and provide care and treatment for the animal until it
 12 is deemed to be in a suitable condition to be returned to the owner." Calif.
 13 Penal Code § 597.1(b).

14 Subdivision (b) continues with language that not only authorized, but *mandated*,
 15 the seizure here:

16 "When the officer has reasonable grounds to believe that very prompt
 17 action is required to protect the health or safety of an animal or the health or
 18 safety of others, **the officer shall immediately seize the animal** and
 19 comply with subdivision (f)." (Emphasis added.)

20 In discussing "reasonable grounds" for immediate seizure, the Court of Appeal
 21 compared "reasonable grounds" to the "exigent circumstances" of search and seizure law,
 22 noting that "every case must be explained in light of what was known to the officer at the
 23 time of entry." *Broden, supra*, at 1220-1221.

24 In *Broden*, the animal control officer reported that she could smell a strong stench
 25 while standing in front of a reptile store; she associated that smell with something dead.
 26 Flies were on the outside of the building trying to get in, and the officer made a
 27 warrantless entry into the store. *Id.*, at 1221-1222. The Court upheld the entry, noting that
 28 Section 597.1 "clearly contemplates that animals" receive the same consideration as cases
 where law enforcement officers make warrantless entries to a building when they have
 "reasonable grounds for believing that persons inside are in need of immediate aid." *Id.*, at
 1222. In *Broden*, the hearing officer (and the California Court of Appeal) upheld the
 warrantless entry as justified by exigent circumstances.

1 In the present case, either the JACKSONS gave permission for Officer MORRIS to
2 enter their motorhome as Officer Morris' report states, or the officer had reasonable
3 grounds to enter, after seeing outside the motorhome a dog with a broken jaw that had to
4 be spoon fed, and another dog that was bleeding and had severe dental problems. Exigent
5 circumstances were even more pronounced here than in *Broden*: in that case, the reptile
6 store was located in a building on a San Rafael street (*Id.*, at 1221), whereas here the 6
7 dogs and 15 cats were kept in a motorhome, which is, after all, mobile.

8 Following the seizure from the JACKSONS' motorhome, SVACA complied with
9 section 597.1, subsection (f), by providing the hearing requested by the plaintiffs. The
10 hearing officer upheld the validity of the seizure, concluding that "very prompt action"
11 was required to protect the health or safety of the animals or others. Thus, at every turn,
12 SVACA acted pursuant to a statutory mandate to protect animals. SVACA's exercise of
13 dominion—and, by extension, the HUMANE SOCIETY's—was clearly not wrongful
14 given this statutory mandate.

15 **C. When Plaintiffs Failed to Pay Boarding Charges, They Were Stripped of**
16 **Possessory Interest in the Animals by Operation of Law**

17 "A recurring theme of section 597.1 is that animal owners will pay, literally, when
18 the animal control officers have cause to take an animal into custody." *Broden, supra*, at
19 1224. Section 597.1 specifically makes the owner "personally liable" for the costs of the
20 seizure and care for the animal. Calif. Penal Code § 597.1(h). If the owner fails to pay
21 these charges "within 14 days of the seizure," the animal "shall be deemed to have been
22 abandoned and may be disposed of by the impounding officer." *Ibid.*; *see also, Broden,*
23 *supra*, at 1224-1225. The *Broden* court held that the statutory provisions "are clear and
24 without ambiguity" and should be applied. *Id.*, at 1225.

25 Plaintiffs knew they had to pay boarding charges. The Notice: Seizure of Animals
26 specifically stated that the animals would not be returned without payment of the costs of
27 their care. The December 22, 2005 letter from SVACA stated the amount of the boarding
28 charges. Thus, when plaintiffs did not pay the charges, the animals were deemed

1 abandoned by operation of law. All possessory interest was transferred to SVACA, which
2 entrusted the animals to the HUMANE SOCIETY.

3 As in *Broden*, this deemed abandonment is decisive: the JACKSONS cannot
4 prevail on a conversion theory because they "no longer had any possessory or ownership
5 interest in the animals that could support an award of damages." *Id.*, at 1226; *see also*
6 *Burlesci, supra*, at 1065 (conversion requires dominion over the "property of another").

7 IV. CONCLUSION

8 Plaintiffs have no right to pursue a conversion claim against the HUMANE
9 SOCIETY, whose dominion over the animals was lawful and proper. The entry of Officer
10 MORRIS into the motorhome, if not with plaintiffs' consent, was justified by the mandate
11 of California Penal Code Section 597.1 to immediately seize the animal(s) when the
12 officer has reasonable grounds to believe very prompt action is required to protect the
13 health or safety of an animal or others.

14 The fact that plaintiffs kept 21 animals in a motorhome speaks for itself. The
15 seizure was proper and upheld by a hearing. When plaintiffs failed to pay required
16 boarding charges, the animals were deemed abandoned per Section 591(h), allowing the
17 impounding officer (SVACA) to dispose of the animals.

18 Since there are no genuine issues as to any material facts, defendant HUMANE
19 SOCIETY SILICON VALLEY respectfully urges this Court to grant its motion for
20 summary judgment, or in the alternative its motion for partial summary judgment.

21
22 DATED: July 30, 2008

JOSEPH COSTELLA & ASSOCIATES

23
24 By: 

25 Harry C. Gilbert
26 Attorneys for Defendant
27 HUMANE SOCIETY SILICON VALLEY
28